

# **Draft Early Public Involvement Requirements**

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## **INTRODUCTION**

The purpose of this draft report is to identify the early public involvement requirements of state and federal laws, executive orders, and administrative policies that may be applicable to the CALFED Bay-Delta Program Environmental Impact Report/Environmental Impact Statement (EIR/EIS).

According to the Council of Environmental Quality regulations implementing the National Environmental Policy Act (NEPA), agencies should strive to prepare an EIS concurrently with and integrated with environmental review and consultation requirements stemming from laws, executive orders, and administrative policies.

## **ENVIRONMENTAL REQUIREMENTS THAT PERTAIN TO EARLY PUBLIC INVOLVEMENT**

Early public involvement affords the public an initial opportunity to review and offer opinions on issues to be discussed in the EIS/EIR. A thorough review was done of the CALFED state and federal laws, executive orders, and administrative policies. No state requirements were identified that pertain to early public involvement. Several federal policies and statutes require early public involvement. These include:

- **Executive Order 12898 of February 11, 1994 (Environmental Justice).** The Environmental Justice Executive Order requires Federal agencies to consider the impacts of the agency's actions on minority and low-income populations and communities, as well as the equity of the distribution of benefits and risks of those decisions. Secretary of Interior Babbitt established an environmental justice policy for Interior agencies. The policy provides that these considerations be specifically included in the NEPA documentation.

To comply with the Environmental Justice Policy established by the Secretary, federal agencies should identify and evaluate, during the environmental scoping and/or planning process, any anticipated effects, direct or indirect, from the proposed project, action, or

decision on minority and low-income populations and communities, including equity of the distribution of the benefits and risks.

- **Executive Orders 11988 (Floodplain Management).** Executive Order 11988 requires federal agencies to prepare floodplain assessments for proposed actions that are located in or affect floodplains. An agency that proposes to conduct an action in a floodplain must consider alternatives to avoid adverse effects and incompatible development in the floodplain. If the only practicable alternative involves siting the project in a floodplain, the agency must minimize potential adverse effects in the floodplain and explain why the action is proposed to be located in the floodplain. The agency must provide the opportunity for early public review of any plans or proposals for actions in floodplains during preparation of the EIS.
- **Executive Order 11990 (Protection of Wetlands).** Executive Order 11990 requires federal agencies to prepare wetland assessments for proposed actions located in or affecting wetlands. Agencies must avoid undertaking new construction in wetlands unless no practicable alternative is available and the proposed action includes all practicable measures to minimize harm to wetlands. The agency must provide the opportunity for early public review.
- **Indian Trust Assets Policy.** The United States, with the Secretary of the Interior as trustee, is responsible for protecting trust assets of Native Americans. Trust assets are legal interests in property held in trust by the United States for Native American tribes or individuals. Examples of items that may be trust assets are lands, minerals, hunting and fishing rights, and water rights. The Bureau of Reclamation has developed a policy that states, in part, that impacts to trust assets will be evaluated during the environmental assessment process. CALFED intends to include this assessment during the early public involvement phase in order to determine whether any trust assets will be impacted in the program area and to solicit Native American participation during and outside of the scoping process.

## CONCLUSION

While these Executive Orders and administrative policies require early public and agency involvement in the scoping process, CALFED's extensive outreach efforts appear to fulfill most of the requirements. There is a concern, however, that CALFED's outreach program may not adequately encompass minority and low-income communities and Native American tribes. Accordingly, a concerted effort will be made to identify these communities and to develop a mailing list that incorporates minority and low-income communities and Native American tribes in areas that may be affected by the Bay-Delta Program.